

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. COUNTERSTATEMENT OF THE ISSUE	2
III. COUNTERSTATEMENT OF THE CASE.....	2
A. PROCEDURAL FACTS.....	2
B. SUBSTANTIVE FACTS	3
IV. SUMMARY OF ARGUMENT	5
V. ARGUMENT	6
C. STANDARD OF REVIEW	6
D. THE MCLE BOARD PROPERLY INTERPRETED AND APPLIED APR 11	10
E. THE MCLE BOARD'S DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.	13
F. THE MCLE BOARD'S DECISION IS NOT ARBITRARY AND CAPRICIOUS.....	16
VI. CONCLUSION.....	17

TABLE OF AUTHORITIES

	PAGE
<u>CASES</u>	
<u>Callecod v. Washington State Patrol</u> , 8 Wn. App. 663 (1997)	8
<u>City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.</u> , 136 Wn.2d 38 (1998)	8
<u>Cornelius v. Washington Dep't of Ecology</u> , 182 Wn.2d 574 (2015)	8, 10
<u>King Cty. Pub. Hosp. Dist. No. 2 v. Washington State Dep't of Health</u> , 178 Wn.2d 363(2013)	9, 16
<u>In re Disciplinary Proceeding Against Poole</u> , 156 Wn.2d 196 (2006)	7
<u>Port of Seattle v. Pollution Control Hearings Bd.</u> , 151 Wn.2d 568 (2004)	8, 9, 16
<u>Providence Hosp. of Everett v. State, Dep't of Soc. & Health Servs.</u> , 112 Wn.2d 353 (1989)	9
<u>STATUES</u>	
RCW 34.05.570(1)(a)	6
RCW 34.05.570(3)	7
RCW 34.05.570(3)(e)	8
RCW 34.05.570(3)(i)	9
<u>RULES</u>	
Wash. Admission and Practice Rule 11	10, 13, 17, 18
Wash. Admission and Practice Rule 11(a)	12

Wash. Admission and Practice Rule 11(c)(1).....	1, 2, 3
Wash. Admission and Practice Rule 11(i)(5)	2, 10
Wash. Admission and Practice Rule 11(i)(6)	3
Wash. Admission and Practice Rule 11(i)(7)	3
Wash. Admission and Practice Rule 11(i)(8)	3, 6
Wash. Admission and Practice Rule 11 Reg. 111	10
Wash. Admission and Practice Rule 21	12
Wash. Admission and Practice Rule 22	12
Wash. R. Enforcement of Lawyer Conduct 10.14(c).....	7
Wash. R. Prof'l Conduct 1.1	12,13,18

I. INTRODUCTION

Lawyer Lance Stryker (Stryker) failed to meet the Mandatory Continuing Legal Education (MCLE) requirements for the 2012-2014 reporting period by the December 31, 2014, deadline, having earned only 20.25 credits (out of the 45 credits required) over the previous three years, in part because he was seriously ill during the last two months of the third year. Because of his medical condition, the MCLE Board (Board) granted his petition for an extension until December 31, 2015, and waived the live credit requirement. Stryker did not earn any credits in 2015, despite the fact that they could all be audio-visual (A/V) credits earned at his own pace in his home. He consequently failed to meet the extended deadline.

Although he failed to earn any credits since his petition for an extension of time was granted, on December 27, 2015, Stryker submitted a request for an additional extension. The Board denied Stryker's December 27, 2015, and subsequent March 8, 2016, requests for an exemption from the MCLE requirements or a second extension of time because Stryker made no attempt to meet the extended deadline despite having the live credit requirement waived. The Board instead recommended that Stryker receive an administrative suspension for failure to comply with APR 11(c)(1).

II. COUNTERSTATEMENT OF THE ISSUE

Does the evidence, which establishes Stryker's failure to attempt to complete his MCLE requirements by the extended deadline, despite having the option to complete all of the outstanding credits anywhere and at his own pace, and while continuing to engage in the practice of law, support the Board's denial of Stryker's petition?

III. COUNTERSTATEMENT OF THE CASE

A. PROCEDURAL FACTS

On January 27, 2015, Stryker filed a petition with the Board requesting an exemption from the MCLE requirements for the 2012-2014 reporting period (ending on December 31, 2014)¹ or, alternatively, an extension until December 31, 2015, a waiver of the live credit requirement, and a waiver of the late fee. EX 1.

On March 16, 2015, the Board's Executive Secretary denied his request for an exemption but granted an extension until December 31, 2015, waived the live credit requirement, and waived the late fee.² EX 2.

¹ "Each lawyer must complete 45 credits of approved continuing legal education by December 31 of the last year of the reporting period." APR 11(c)(1). Although the MCLE requirements changed effective January 1, 2016, the requirement of 45 total credits remains unchanged. Pursuant to APR 11(i)(5), a lawyer may file with the MCLE Board an undue hardship petition for an extension, waiver and/or modification of the MCLE requirements for that reporting period.

² The late fee waiver was contingent upon all credits being earned and certified by the December 31, 2015, extended deadline.

On December 27, 2015, Stryker submitted a second request for an exemption or, alternatively, an extension until December 31, 2016, a waiver of the live credit requirement (granted in March 2015), and a waiver of the late fee. EX 3.

On January 26, 2016, pursuant to APR 11(i)(6), the Board denied Stryker's second petition. EX 4. On February 12, 2016, the Bar mailed Stryker a Pre-Suspension Notice for failure to meet the 2012-2014 MCLE requirements by the extended deadline. EX 5.

Stryker then submitted a third petition making the same requests. EX 6. On April 8, 2016, he appeared before the Board for a telephonic hearing³ regarding his petition. TR at 1.⁴ At that point, Stryker had been allowed a total of more than four years to earn 45 MCLE credits.

On April 27, 2016, the Board denied Stryker's petition and recommended administrative suspension for failure to comply with APR 11(c)(1). EX 8. Stryker then petitioned for review by the Supreme Court pursuant to APR 11(i)(8).

B. SUBSTANTIVE FACTS

Based on his year of admission to practice law, Stryker was required to complete 45 MCLE credits for the 2012-2014 reporting period by December 31, 2014. At that time, however, Stryker had a total of only

³ APR 11(i)(7) permits hearings by the MCLE Board.

⁴ "TR" refers to the transcript of the April 8, 2016, hearing.

20.25 CLE credits, which remains true today. EX 10. Furthermore, the Board has no record of Stryker attending any CLEs since January 2013, id., a year and a half prior to being struck with acute pancreatitis caused by a gallstone on October 28, 2014. EX 1 at 2. As a result of his pancreatitis, Stryker is unable to concentrate and suffers from abdominal pain, extreme nausea, vomiting and the inability to control his bowels. Id.

In view of Stryker's medical condition, the Board Executive Secretary, acting in compliance with guidelines established by the Board, extended Stryker's MCLE compliance deadline to December 31, 2015, and waived his live credit requirement (allowing him to earn all remaining credits anytime, anywhere at his own pace) and late fee. EX 2.

Four days before the end of his extension, on December 27, 2015, Stryker, who continued to suffer from acute pancreatitis, requested another extension, this time until December 31, 2016, or, alternatively, an exemption from the MCLE requirements. EX 3.

In view of Stryker's failure to attempt to meet the extended deadline and his uncertainty regarding returning to the practice of law after he regains his health, id., the MCLE Board denied his petition and recommended that he consider inactive membership. EX 4.

Stryker appealed and the Board therefore held a hearing on Stryker's third petition on April 8, 2016. Stryker appeared via telephonic

conference, which lasted almost 28 minutes. During Stryker's testimony at the hearing, which continued without a break, he testified that the judge removed him from the last large case he was on because of his medical condition. TR 16, 17.

Nonetheless, despite his illness, Stryker testified that he is representing a client in a legal matter. TR at 7, 12. He explained that his practice in this case is limited to writing letters and emails, and talking on the phone, TR at 12, and that he intends to change his membership to inactive once the matter is finished. TR at 7.

During the hearing, Stryker testified that he would only be able to watch CLE lectures in increments of 10-15 minutes. TR at 10. Despite acknowledging that possibility, and aside from signing up for two online courses that he did not attend, TR at 10, Stryker was unable to articulate a plan for completing the remaining required credits if the requested extension to December 31, 2016, were granted. TR at 11.

IV. SUMMARY OF ARGUMENT

Stryker claims that he is unable to watch CLE videos due to his medical condition, which he says limits his ability to sit for a full hour at a time. TR at 11. At the same time, the MCLE Board took note of the fact that Stryker is continuing to practice law and says he is able to take actions on behalf of his client by writing emails and letters and making phone

calls regarding his client's case. TR at 12. After considering all of the evidence at the hearing including Stryker's testimony that he is able to take actions to represent his client, the MCLE Board concluded that he could also take actions to earn MCLE credits through A/V materials. The Board found that his total failure to earn any credits in 2015 and 2016, and his lack of any plan for completing the outstanding credits, establishes that he has no intention of earning the credits, thereby rendering a further extension pointless. EX 8.

V. ARGUMENT

C. STANDARD OF REVIEW

Admission and Practice Rule 11(i)(8) provides for Supreme Court review of MCLE Board decisions, but does not state the standard of review to be applied. The MCLE Board review and hearing procedure is not an adversarial process, but is an administrative type of proceeding, with a written record of administrative actions taken and an opportunity for the member to be heard in a relatively informal "hearing" setting. Because of the administrative nature of the proceeding, it appears appropriate to borrow the standard of review from the state Administrative Procedure Act (APA) governing review of administrative orders. Under the APA, the "burden of demonstrating the invalidity of agency action is on the party asserting invalidity." RCW 34.05.570(1)(a). Accordingly, if

the Court uses that standard for guidance, Stryker bears the burden of demonstrating the invalidity of the MCLE Board's action.

Under the state APA, an agency decision will only be overturned under the circumstances set forth in RCW 34.05.570(3) the following of which are potentially applicable here:⁵

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

...

(i) The order is arbitrary or capricious.

RCW 34.05.570(3).⁶

⁵ Stryker makes no argument that there was a constitutional violation, the decision is outside of the Board's authority, the procedures followed were unlawful, the Board failed to decide all issues, a motion for disqualification was improperly denied, or that the Board's order is inconsistent with a rule, which are the other grounds for relief stated in the statute, so those grounds will not be addressed here.

⁶ The lawyer discipline cases cited by Stryker under the "Standards of Review" section of his brief are not relevant here because the MCLE Board's recommendation is for an administrative suspension, not a disciplinary suspension, and the two types of matters are procedurally very different. Lawyer discipline proceedings are adversarial proceedings governed by the explicit and detailed procedural rules set forth in the Rules for Enforcement of Lawyer Conduct (ELC), which include rules on the relevant burden of proof and procedures for seeking review. However, as the case Stryker quotes from establishes, this Court applies a "substantial evidence" standard when reviewing factual determinations in lawyer discipline matters, see In re Disciplinary Proceeding Against Poole, 156 Wn.2d 196, 208, 125 P.3d 956 (2006), and the "substantial evidence" standard is included in the APA standards quoted above. RCW 34.05.570(3). The "clear preponderance" standard is required in lawyer discipline proceedings by the ELC, ELC 10.14(c), but that standard does not appear in the APR concerning petitions for hardship waiver. However, even if the "clear preponderance" standard were to be applied in this matter, the clear preponderance of the facts proven support the Board's decision because they establish that Stryker's medical condition, while serious, does not affect his ability

When considering subsection (d), interpretation and application of the law, such questions are reviewed de novo, but great weight is given to the agency's interpretation of the law "where the statute is within the agency's special expertise." Cornelius v. Washington Dep't of Ecology, 182 Wn.2d 574, 585, 344 P.3d 199 (2015) (citing Port of Seattle v. Pollution Control Hearings Bd., 151 Wn.2d 568, 593, 90 P.3d 659 (2004)). As discussed in greater detail below, the Board is charged by the Court with applying and interpreting the MCLE rules, and therefore this issue is directly in line with the Board's special expertise.

Under RCW 34.05.570(3)(e), substantial evidence supporting an agency's decision exists if there is "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order." City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d 38, 46, 959 P.2d 1091 (1998) (quoting Callecod v. Washington State Patrol, 84 Wn.App. 663, 673, 929 P.2d 510 (1997)). As described in greater detail below, the Board reviewed all of the records regarding Stryker's failure to complete the required 45 CLE credits for a period of over four years, Stryker's medical condition and how it does or does not affect his ability to perform certain activities and does not prohibit him

to complete his 2012-2014 credits requirements in light of the fact that he can earn all of the credits through audio visual credits.

from continuing to practice law, and heard his testimony at the hearing, and the Board was persuaded that he should not be granted any further extension.

In addition, an agency action cannot be considered arbitrary and capricious, even if there is room for two opinions and the reviewing court reaches the opposite conclusion, so long as the “agency acted honestly and upon due consideration.” Port of Seattle, 151 Wn.2d at 589. For purposes of RCW 34.05.570(3)(i), an arbitrary and capricious agency decision is one that it is “the result of willful and unreasoning disregard of the facts and circumstances.” King Cty. Pub. Hosp. Dist. No. 2 v. Washington State Dep't of Health, 178 Wn.2d 363, 372, 309 P.3d 416 (2013) (quoting Providence Hosp. of Everett v. State, Dep't of Soc. & Health Servs., 112 Wn.2d 353, 356, 770 P.2d 1040 (1989) (citations omitted)). Here, the Board’s action was not the result of any willful and unreasoning disregard of the facts and circumstances of Stryker’s failure to comply with the MCLE requirements or his illness but was, in fact, completely supported by the facts regarding how his illness does or does not affect his ability to participate in activities that contain parallels to completing his MCLE credits.

D. THE MCLE BOARD PROPERLY INTERPRETED AND APPLIED APR 11.

1. The Board's Interpretation and Application of APR 11 is Entitled to Deference.

The MCLE Board was established by the Supreme Court in 1976 to oversee MCLE compliance of lawyers in Washington and it was authorized to, among other things, waive or modify MCLE requirements based on a showing of undue hardship. Appendix APR 11 Reg. 111.

The Board is the only body to adjudicate a full range of MCLE related petitions, so it has a unique perspective and expertise. Furthermore, Stryker does not identify any legal authority to support his personal opinion that the Board's interpretation and application of the rules governing MCLE requirements is incorrect. Therefore, it would be appropriate for the Court to give great deference to the Board's interpretation and application of APR 11, the rules that make up the law applicable to MCLE requirements. See Cornelius, 182 Wn.2d at 585.

a. The Plain Meaning of APR 11 Supports the Board's Interpretation and Application of the Rule.

APR 11(i)(5) grants the Board authority to review petitions for extension, modification or waiver of the MCLE requirements:

A lawyer may file with the MCLE Board an undue hardship petition for an extension, waiver and/or modification of the MCLE requirements for that reporting period. In consideration of the petition, the MCLE Board

shall consider factors of undue hardship, such as serious illness, extreme financial hardship, disability, or military service, *that affect* a lawyer's ability to meet the education or reporting requirements.

Id. (emphasis added).

In order for a petition to be granted, undue hardship alone is not sufficient; it must also affect the lawyer's capability of complying with the requirements. Here, the word *that* introduces a restrictive relative clause identifying the noun, in this case, undue hardship. Therefore, the plain meaning of the rule does not give the MCLE Board the authority to consider any and all hardship factors, but only those *that affect* a lawyer's ability to meet the education or reporting requirements.

The MCLE Board does not challenge Stryker's medical condition and the hardship that it presents; instead, it disputes the *effect* it has on his ability to watch CLE videos. The correlation is manifested in terms of capability. The level of mental stamina and concentration needed to listen or view CLE lectures cannot be more than what is required to practice law or testify at a hearing. Accordingly, Stryker's ability to practice law and even pursue his own appeal despite a medical hardship indicates his ability to comply with MCLE requirements.

b. The Board's Interpretation and Application of APR 11 is Consistent with the Goal of Mandatory Continuing Legal Education.

The goal of mandatory continuing legal education is to keep lawyers up-to-date in their knowledge and skills so that they can provide competent legal representation to their clients. As stated in APR 11(a), MCLE "is intended to enhance lawyers' legal services to their clients and protect the public by assisting lawyers in maintaining and developing their competence as defined in RPC 1.1, fitness to practice as defined in APR 22, and character as defined in APR 21."

In order to maintain an active license to practice law in Washington State, lawyers must complete at least 45 CLE credits every three years.⁷ In response to his first petition for an extension, Stryker was awarded more time to complete these requirements due to his condition: The Board's Executive Secretary accepted Stryker's assertions at face value and gave him an extra nine months to meet the requirement. He has now had over four and a half years to complete 45 CLE credits, and he has not even completed half that number and none in the last three and a half years.

On April 8, 2016, Stryker testified that although his medical condition has remained the same, he has an active case and he is able to

⁷ See footnote 1.

practice law with some limitations. TR at 12. The Board concluded that this indicates that he is also capable of watching videotaped CLE seminars in order to earn his required CLE credits.

Therefore, the MCLE Board, in compliance with APR 11 and in furtherance of the RPC 1.1 mandate that lawyers provide competent representation to clients, concluded that if Stryker is willing and able to practice law he should be capable of maintaining his competence to practice law by successfully complying with MCLE requirements.

E. THE MCLE BOARD'S DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

Stryker argues that the order entered by the Board is not supported by evidence in the record. More specifically, Stryker argues that the fact that he has a client is irrelevant. Additionally, he contends that the Board's conclusion that he has no intention to complete the MCLE requirements is unfounded.

As described in greater detail below, the Board reviewed Stryker's MCLE records establishing that he has not attended a single CLE activity since January 2013. EX 10. The Board heard testimony that Stryker had made a plan intended to change his membership to inactive, TR at 7, but had made no effort and no plans to meet the MCLE requirements despite the extension granted and the waiver of the live credit requirements. TR at

11. Stryker also testified that he was able to sit for small chunks of time, TR at 10, 11. The Board also observed that Stryker was able to participate and testify by phone for almost 30 minutes of uninterrupted time during the hearing. The evidence presented was more than sufficient to persuade someone of the correctness of the order recommending administrative suspension.

1. The Record Supports the Board's Conclusion that Stryker's Is Able to Comply with MCLE Requirements

Stryker asserts that the MCLE Board erred in taking into account the fact that he has a client when reviewing his petition and concluding that he has no intent to comply with MCLE requirements. Stryker, however, cites no authority for the proposition that the MCLE Board should not consider a lawyer's record in its entirety.

The petition review process by the MCLE Board is a holistic one. All relevant factors are taken into account and in this case, the fact that Stryker is able to practice law, even if in a limited manner, counters his argument that he is unable to meet the MCLE requirements by watching CLE videos.

2. The Record Supports the Board's Conclusion that Stryker Failed to Demonstrate his Intention to Meet the MCLE Requirements if an Extension Were Granted.

The MCLE Board properly concluded that Stryker has demonstrated no intention of completing the remaining credits if a second extension were granted. This conclusion is supported by the following evidence:

- Stryker's testimony establishing his intention to go inactive rather than to comply with MCLE requirements: "All I want to do is to have the opportunity to clear this one matter; and once I do that, then it's my intention to become inactive." TR at 7.
- Stryker's testimony establishing that he was unable to state his plan for completing the MCLE requirements if the additional extension were granted: "Like I say, I can't tell you because I'm incontinent." TR at 11.
- Stryker's testimony establishing that despite being granted a waiver of the live credit requirement, he has not attempted to watch a single CLE video: " I suppose that would be possible. (...) I suppose I could - - I could try the recorded ones, I just don't -- I don't even -- I haven't looked at it." TR at 13.

Additionally, Stryker did not take any CLE classes for a period of 20 months during the 2012-2014 reporting period prior to developing

pancreatitis. EX. 10. Instead, he planned to complete the remaining 24.5 credits in November and December 2014. TR at 15. His inability to meet the MCLE requirements when healthy combined with his desire to go inactive and his inability to articulate a plan to meet the requirements are sufficient to support the Board's conclusion that he has no intention of completing the requirements.

Furthermore, granting another extension would only compound the problem as he would have to earn 24.75 credits by December 31, 2016, EX 10, and 45 credits by December 31, 2017 (the end of the 2015-2017 reporting period).

F. THE MCLE BOARD'S DECISION IS NOT ARBITRARY AND CAPRICIOUS.

The MCLE Board's action was not arbitrary and capricious. The Board acted honestly and upon due consideration, see Port of Seattle, 151 Wn.2d at 589; the record is clear and demonstrates the Board's full consideration of Stryker's case. The decision was not the result of willful and unreasoning disregard of the facts and circumstances see King Cty. Pub. Hosp. Dist. No. 2, 178 Wn.2d at 372, but instead is based on the Board's careful consideration of the full record.

As previously explained, if Stryker is able to represent a client despite his condition, physically and mentally able to participate in a

nearly 28-minute long hearing without breaks, and sit for short periods of time, he should be able to watch CLE videos, even broken into smaller chunks of time, sufficient to complete his MCLE requirements. In addition, Stryker's own testimony establishes that his ultimate goal is to change his membership to inactive as soon as the legal matter he is currently working on is concluded, TR at 7, rather than to comply with MCLE requirements. It is therefore not unreasonable, arbitrary or capricious for the Board to conclude that he is able to meet the requirements of APR 11.

Based on the evidence considered by the Board, even if the Court could reach the opposite conclusion (that Stryker is entitled to an exemption or further extension despite his active legal practice), the Board's decision cannot be considered arbitrary and capricious as it is not unreasonable given the circumstances.

VI. CONCLUSION

The MCLE Board's decision is supported by relevant evidence and Stryker has provided no good argument for the Court to reject it. In fact, the time and effort Stryker put into pursuing his appeal further establishes that he could complete the MCLE requirements despite his medical condition.

Consistent with the purpose of APR 11 and RPC 1.1, Stryker should be required to comply with the 2012-2014 MCLE requirements in order to maintain his active license to practice law. The Board's conclusions and recommendation for administrative suspension should therefore be affirmed.

RESPECTFULLY SUBMITTED this 8th day of August, 2016.


Renata de Carvalho Garcia, Bar No. 46418
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PROOF OF SERVICE

The undersigned certifies that she served a true copy of WSBA's ANSWERING BRIEF by placing the same in an envelope, which was sealed and deposited in the United States via certified mail with prepaid first class postage; such deposit taking place in Seattle, Washington, on the date set forth below, and addressed as follows:

Lance Stewart Stryker
40 Palos Verdes
White Salmon, WA 98672

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed on August 8, 2016, in Seattle, Washington



Sherry Lindner
Paralegal

APPENDIX A

APR 11
MANDATORY CONTINUING LEGAL EDUCATION (MCLE)

(a) **Purpose.** Mandatory continuing legal education (MCLE) is intended to enhance lawyers' legal services to their clients and protect the public by assisting lawyers in maintaining and developing their competence as defined in RPC 1.1, fitness to practice as defined in APR 22, and character as defined in APR 21. These rules set forth the minimum continuing legal education requirements for lawyers to accomplish this purpose.

(b) **Definitions.**

- (1) "Activity" means any method by which a lawyer may earn MCLE credits.
- (2) "Association" means the Washington State Bar Association.
- (3) "Attending" means participating in an approved activity or course.
- (4) "Calendar year" means a time period beginning January 1 and ending December 31.
- (5) "Identical activity" means any prior course or other activity that has not undergone any substantial or substantive changes since last offered, provided, or undertaken.
- (6) "Lawyer" means an active member of the Association, a judicial member of the Association classified as an administrative law judge, and any other lawyer admitted to the limited practice of law in Washington who is required by the Admission and Practice Rules (APR) to comply with this rule.
- (7) "Reporting period" means a three-year time period as assigned by the Association in which a lawyer must meet the education requirements of this rule.
- (8) "Sponsor" means a provider of continuing legal education activities.

(c) **Education Requirements.**

- (1) **Minimum Requirement.** Each lawyer must complete 45 credits of approved continuing legal education by December 31 of the last year of the reporting period with the following requirements:
 - (i) at least 15 credits must be from attending approved courses in the subject of law and legal procedure, as defined in section (f)(1); and
 - (ii) at least six credits must be in ethics and professional responsibility, as defined in section (f)(2).

- (2) **Earning Credits.** A lawyer earns one credit for each 60 minutes of attending an approved activity. Credits are rounded to the nearest quarter hour. A lawyer may earn no more than eight credits per calendar day. A lawyer cannot receive credit more than once for an identical activity within the same reporting period.
 - (3) **New Lawyers.** Newly admitted lawyers are exempt for the calendar year of admission.
 - (4) **Military Personnel.** Military personnel in the United States Armed Forces may be granted an exemption, waiver or modification upon proof of undue hardship, which includes deployment outside the United States. A petition shall be filed in accordance with subsection (i)(5) of these rules.
 - (5) **Exemptions.** The following are exempt from the requirements of this rule for the reporting period(s) during which the exemption applies:
 - (i) **Judicial Exemption.** Judicial members of the Association, except for administrative law judges;
 - (ii) **Supreme Court Clerks.** The Washington State Supreme Court clerk and assistant clerk(s) who are prohibited by court rule from practicing law;
 - (iii) **Legislative Exemption.** Members of the Washington State Congressional Delegation or the Washington State Legislature; and
 - (iv) **Gubernatorial Exemption.** The Governor of Washington State.
 - (6) **Comity.** The education requirements in Oregon, Idaho and Utah substantially meet Washington's education requirements. These states are designated as comity states. A lawyer may certify compliance with these rules in lieu of meeting the education requirement by paying a comity fee and filing a Comity Certificate of MCLE Compliance from a comity state certifying to the lawyer's subjection to and compliance with that state's MCLE requirements during the lawyer's most recent reporting period.
 - (7) **Carryover Credits.** If a member completes more than the required number of credits for any one reporting period, up to 15 of the excess credits, 2 of which may be ethics and professional responsibility credits, may be carried forward to the next reporting period.
- (d) **MCLE Board.**
- (1) **Establishment.** There is hereby established an MCLE Board consisting of seven members, six of whom must be active members of the Bar Association and one who is not a member of the Association. The Supreme Court shall designate one board member to serve as chair of the MCLE Board. The members of the MCLE

Board shall be appointed by the Supreme Court. Appointments shall be staggered for a three-year term. No member may serve more than two consecutive terms. Terms shall end on September 30 of the applicable year.

(2) Powers and Duties.

- (i) Rules and Regulations. The MCLE Board shall review and suggest amendments or make regulations to APR 11 as necessary to fulfill the purpose of MCLE and for the timely and efficient administration of these rules, and clarification of education requirements, approved activities, and approved course subjects. Suggested amendments are subject to review by the Association's Board of Governors and approval by the Supreme Court.
- (ii) Policies. The MCLE Board may adopt policies to provide guidance in the administration of APR 11 and the associated regulations. The MCLE Board will notify the Board of Governors and the Supreme Court of any policies that it adopts. Such policies will become effective 60 days after promulgation by the MCLE Board.
- (iii) Approve Activities. The MCLE Board shall approve and determine the number of credits earned for all courses and activities satisfying the requirements of these rules. The MCLE Board shall delegate this power to the Association subject to MCLE Board review and approval.
- (iv) Review. The MCLE Board shall review any determinations or decisions regarding approval of activities made by the Association under these rules that adversely affect any lawyer or sponsor upon request of the lawyer, sponsor or Association. The MCLE Board may take appropriate action consistent with these rules after any such review and shall notify the lawyer or sponsor in writing of the action taken. The MCLE Board's decision shall be final.
- (v) Fees. The MCLE Board shall determine and adjust fees for the failure to comply with these rules and to defray the reasonably necessary costs of administering these rules. Fees shall be approved by the Association's Board of Governors.
- (vi) Waive and Modify Compliance. The MCLE Board shall waive or modify a lawyer's compliance with the education or reporting requirements of these rules upon a showing of undue hardship filed in accordance with these rules. The MCLE Board may delegate this power to the Association subject to (1) parameters and standards established by the MCLE Board, and (2) review by the MCLE Board.

(vii) Approve Mentoring Programs. The MCLE Board shall approve mentoring programs that meet requirements and standards established by the MCLE Board for the purposes of awarding MCLE credit under these rules.

(viii) Audits for Standards Verification. The MCLE Board may audit approved courses to ensure compliance with the standards set forth in these rules.

(3) Expenses and Administration. Members of the MCLE Board shall not be compensated for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties according to the Association's expense policies. All expenses incurred and fees collected shall be submitted on a budget approved by the Association's Board of Governors. The Association shall provide administrative support to the MCLE Board.

(e) **Approved Activities.** A lawyer may earn MCLE credit by attending, teaching, presenting, or participating in activities approved by the Association. Only the following types of activities may be approved:

- (1) Attending, teaching, presenting, or participating in or at a course, provided that any pre-recorded audio/visual course is less than five years old;
- (2) Preparation time for a teacher, presenter, or panelist of an approved activity at the rate of up to five credits per hour of presentation time, provided that the presentation time is at least 30 minutes in duration;
- (3) Attending law school courses with proof of registration or attendance;
- (4) Attending bar review courses for jurisdictions other than Washington with proof of registration or attendance;
- (5) Writing for the purpose of lawyer education, when the writing has been published by a recognized publisher of legal works as a book, law review, or scholarly journal article of at least 10 pages, will earn one credit for every 60 minutes devoted to legal research and writing;
- (6) Teaching law school courses, when the instructor is not a full-time law school professor;
- (7) Providing pro bono legal services provided the legal services are rendered through a qualified legal services provider as defined in APR 8(e);
- (8) Participating in a structured mentoring program approved by the MCLE Board provided the mentoring is free to the mentee and the mentor is an active member of the Association in good standing and has been admitted to the practice of law

in Washington for at least five years. The MCLE Board shall develop standards for approving mentoring programs; and

- (9) Judging or preparing law school students for law school recognized competitions, mock trials, or moot court. The sponsoring law school must comply with all sponsor requirements under this rule.
- (f) **Approved Course Subjects.** Only the following subjects for courses will be approved:
- (1) Law and legal procedure, defined as legal education relating to substantive law, legal procedure, process, research, writing, analysis, or related skills and technology;
 - (2) Ethics and professional responsibility, defined as topics relating to the general subject of professional responsibility and conduct standards for lawyers and judges, including diversity and antibias with respect to the practice of law or the legal system, and the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress;
 - (3) Professional development, defined as subjects that enhance or develop a lawyer's professional skills including effective lawyering, leadership, career development, communication, and presentation skills;
 - (4) Personal development and mental health, defined as subjects that enhance a lawyer's personal skills, well-being, and awareness of mental health issues. This includes stress management, and courses about, but not treatment for, anxiety, depression, substance abuse, suicide, and addictive behaviors;
 - (5) Office management, defined as subjects that enhance the quality of service to clients and efficiency of operating an office, including case management, time management, business planning, financial management, office technology, practice development and marketing, client relations, employee relations, and responsibilities when opening or closing an office;
 - (6) Improving the legal system, defined as subjects that educate and inform lawyers about current developments and changes in the practice of law and legal profession in general, including legal education, global perspectives of the law, courts and other dispute resolution systems, regulation of the practice of law, access to justice, and pro bono and low cost service planning; and
 - (7) Nexus subject, defined as a subject matter that does not deal directly with the practice of law but that is demonstrated by the lawyer or sponsor to be related to a lawyer's professional role as a lawyer.
- (g) **Applying for Approval of an Activity.** In order for an activity to be approved for MCLE credit, the sponsor or lawyer must apply for approval as follows.

- (1) Sponsor. A sponsor must apply for approval of an activity by submitting to the Association an application fee and an application in a form and manner as prescribed by the Association by no later than 15 days prior to the start or availability of the activity.
 - (i) Late fee. A late fee will be assessed for failure to apply by the deadline. The Association may waive the late fee for good cause shown.
 - (ii) Repeating Identical Course. A sponsor is not required to pay an application fee for offering an identical course if the original course was approved and the identical course is offered less than 12 months after the original course.
 - (iii) Waiver of Application Fee. The Association shall waive the application fee for a course if the course is offered for free by a government agency or nonprofit organization. This provision does not waive any late fee.
- (2) Lawyer. A lawyer may apply for approval of an activity not already approved or submitted for approval by a sponsor by submitting to the Association an application in a form and manner as prescribed by the Association. No application fee is required.

(h) Standards for Approval. Application of the standards for approval, including determination of approved subject areas and approved activities in subsections (e) and (f) of this rule, shall be liberally construed to serve the purpose of these rules. To be approved for MCLE credit, all courses, and other activities to the extent the criteria apply, must meet all of the following criteria unless waived by the Association for good cause shown:

- (1) A course must have significant intellectual or practical content designed to maintain or improve a lawyer's professional knowledge or skills, competence, character, or fitness;
- (2) Presenters must be qualified by practical or academic experience or expertise in the subjects presented and not disbarred from the practice of law in any jurisdiction;
- (3) Written materials in either electronic or hardcopy format must be distributed to all lawyers before or at the time the course is presented. Written materials must be timely and must cover those matters that one would expect for a professional treatment of the subject. Any marketing materials must be separate from the written subject matter materials;
- (4) The physical setting must be suitable to the course and free from unscheduled interruption;

- (5) A course must be at least 30 minutes in duration;
- (6) A course must be open to audit by the Association or the MCLE Board at no charge except in cases of government-sponsored closed seminars where the reason is approved by the Association;
- (7) Presenters, teachers, panelists, etc. are prohibited from engaging in marketing during the presentation of the course;
- (8) A course must not focus directly on a pending legal case, action, or matter currently being handled by the sponsor if the sponsor is a lawyer, private law firm, corporate legal department, legal services provider, or government agency; and
- (9) A course cannot have attendance restrictions based on race, color, national origin, marital status, religion, creed, gender, age, disability, or sexual orientation.

(i) Lawyer Reporting Requirements.

- (1) **Certify Compliance.** By February 1 of the year following the end of a lawyer's reporting period, a lawyer must certify compliance, including compliance by comity certification, with the education requirements for that reporting period in a manner prescribed by the Association.
- (2) **Notice.** Not later than July 1 every year, the Association shall notify all lawyers who are in the reporting period ending December 31 of that year that they are due to certify compliance.
- (3) **Delinquency.** A lawyer who does not certify compliance by the certification deadline or by the deadline set forth in any petition decision granting an extension may be ordered suspended from the practice of law as set forth in APR 17.
- (4) **Lawyer Late Fee.** A lawyer will be assessed a late fee for either (i) or (ii) below but not both.
 - (i) **Education Requirements Late Fee.** A lawyer will be assessed a late fee for failure to meet the minimum education requirements of this rule by December 31. Payment of the late fee is due by February 1, or by the date set forth in any decision or order extending time for compliance, or by the deadline for compliance set forth in an APR 17 presuspension notice.
 - (ii) **Certification and Comity Late Fee.** A lawyer will be assessed a late fee for failure to meet the certification requirements or comity requirements by February 1. Payment of the late fee is due by the date set forth in any decision or order extending time for compliance or by the deadline for compliance set forth in an APR 17 presuspension notice.

- (iii) Failure to Pay Late Fee. A lawyer who fails to pay the MCLE late fee by the deadline for compliance set forth in an APR 17 presuspension notice may be ordered suspended from the practice of law as set forth in APR 17.
- (5) Petition for Extension, Modification or Waiver. A lawyer may file with the MCLE Board an undue hardship petition for an extension, waiver, and/or modification of the MCLE requirements for that reporting period. In consideration of the petition, the MCLE Board shall consider factors of undue hardship, such as serious illness, extreme financial hardship, disability, or military service, that affect the lawyer's ability to meet the education or reporting requirements. The petition shall be filed at any time in a form and manner as prescribed by the Association but a petition filed later than 30 days after the date of the APR 17 presuspension notice will not stay suspension for the reasons in the APR 17 presuspension notice.
- (6) Decision on Petition. The MCLE Board shall as soon as reasonably practical notify the lawyer of the decision on a petition. A lawyer may request review of the decision by filing, within 10 days of notice of the decision, a request for a hearing before the MCLE Board.
- (7) Hearing on Petition. Upon the timely filing of a request for hearing, the MCLE Board shall hold a hearing on the petition.
 - (i) The MCLE Board shall give the lawyer at least 10 days written notice of the time and place of the hearing.
 - (ii) Testimony taken at the hearing shall be under oath and recorded.
 - (iii) The MCLE Board shall issue written findings of fact and an order consistent with these rules as it deems appropriate. The MCLE Board shall provide the lawyer with a copy of the findings and order.
 - (iv) The MCLE Board's order is final unless within 10 days from the date thereof the lawyer files a written notice of appeal with the Supreme Court and serves a copy on the Association. The lawyer shall pay to the Clerk of the Supreme Court any required filing fees.
- (8) Review by the Supreme Court. Within 15 days of filing a notice with the Supreme Court for review of the MCLE Board's findings and order, after such a non-compliance petition hearing, the lawyer shall cause the record or a narrative report in compliance with RAP 9.3 to be transcribed and filed with the Bar Association.
 - (i) The MCLE Board chairperson shall certify that any such record or narrative report of proceedings contains a fair and accurate report of the occurrences in and evidence introduced in the cause.

- (ii) The MCLE Board shall prepare a transcript of all orders, findings, and other documents pertinent to the proceeding before the MCLE Board, which must be certified by the MCLE Board chairperson.
- (iii) The MCLE Board shall then file promptly with the Clerk of the Supreme Court the record or narrative report of proceedings and the transcripts pertinent to the proceedings before the MCLE Board.
- (iv) The matter shall be considered by the Supreme Court pursuant to procedures established by order of the Court.
- (v) The times set forth in this rule for filing notices of appeal are jurisdictional. The Supreme Court, as to appeals pending before it, may, for good cause shown, (1) extend the time for the filing or certification of said record or narrative report of proceedings and transcripts; or, (2) dismiss the appeal for failure to prosecute the same diligently.

- (9) **Compliance Audits.** The Association may audit an individual lawyer's compliance certification to substantiate participation in the activities listed in the certification. The Association may request records from a lawyer or sponsor for the purpose of conducting the audit and the lawyer must comply with all such requests. Where facts exist that indicate a lawyer may not have participated in the activities certified to, the lawyer may be referred to the Association's Office of Disciplinary Counsel and/or credit for the activities may be rescinded.

(j) **Sponsor Duties.** All sponsors must comply with the following duties unless waived by the Association for good cause shown:

- (1) The sponsor must not advertise course credit until the course is approved by the Association but may advertise that the course credits are pending approval by the Association after an application has been submitted. The sponsor shall communicate to the lawyer the number of credits and denominate whether the credits are "law and legal procedure" as defined under section (f)(1), "ethics and professional responsibility" as defined under section (f)(2), or "other," meaning any of the other subjects identified in sections (f)(3)-(7).
- (2) The sponsor must provide each participant with an evaluation form to complete. The forms or the information from the forms must be retained for two years and provided to the Association upon request.
- (3) The sponsor must submit an attendance report in a form and manner as prescribed by the Association and pay the required reporting fee no later than 30 days after the conclusion of the course. A late fee will be assessed for failure to report attendance by the deadline.

- (i) Waiver of Reporting Fee. The Association shall waive the reporting fee for a course if the course is offered for free by a government agency or nonprofit organization. This provision does not waive any late fee.
 - (4) The sponsor must retain course materials for four years from the date of the course. Upon request of the Association, a sponsor must submit for review any written, electronic or presentation materials including copies of audio/visual courses.
 - (5) The sponsor must keep accurate attendance records and retain them for six years. The sponsor must provide copies to the Association upon request.
 - (6) The sponsor shall not state or imply that the Association or the MCLE Board approves or endorses any person, law firm, or company providing goods or services to lawyers or law firms.
 - (7) Accredited Sponsors. The Association may approve and accredit sponsoring organizations as "accredited sponsors" subject to procedures and fees established by the Association. Accredited sponsors have the same duties as sponsors but have the additional responsibility of approving their own courses and determining appropriate MCLE credit in accordance with this rule. Accredited sponsors pay an annual flat fee for all course applications submitted in lieu of an application fee for each individual course.
- (k) **Confidentiality.** Unless expressly authorized by the Supreme Court or by the lawyer, all files and records relating to a lawyer's individual MCLE requirements are confidential and shall be privileged against disclosure except as necessary to conduct an investigation, hearing, and appeal or review pursuant to these rules. This provision does not apply to the Association except that such records shall not be disclosed to Association staff responsible for creating or marketing CLE products.

[Adopted effective January 1, 2016.]

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, August 08, 2016 11:45 AM
To: 'Sherry Lindner'
Cc: Renata Garcia; lancestryker@charter.net
Subject: RE: No. 201,531-0 In re MCLE Board Hearing Lance Stryker (#35005)

Received 8/8/16.

Supreme Court Clerk's Office

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From: Sherry Lindner [mailto:sherryl@wsba.org]
Sent: Monday, August 08, 2016 11:37 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Renata Garcia <renatag@wsba.org>; lancestryker@charter.net
Subject: No. 201,531-0 In re MCLE Board Hearing Lance Stryker (#35005)

In re MCLE Board Hearing, Lance Stryker (#35005)
No. 201,531-0

File by:
Sherry Lindner
Paralegal
206-733-5941

Dear Clerk of the Court,

Attached please find the Answering Brief of the Washington State Bar Association.

A hard copy will be mailed to Mr. Stryker at:

Lance Stewart Stryker
40 Palos Verdes
White Salmon, WA 98672

Please let me know if you have any questions.

Thank you,
Sherry

Sherry Lindner | Paralegal | Office of General Counsel

Washington State Bar Association | T 206.733.5941 | F 206.727.8314 | sherryl@wsba.org

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